

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	<b>:</b>	<b>CRIMINAL NO. :_____</b>
<b>v.</b>	<b>:</b>	<b>DATE FILED:_____</b>
<b>THOMAS FORTUNATO</b>	<b>:</b>	<b>VIOLATIONS:</b>
	<b>:</b>	<b>21 U.S.C. § 846 (conspiracy to distribute</b>
	<b>:</b>	<b>and possess with intent to distribute</b>
	<b>:</b>	<b>oxycodone - 1 count)</b>
	<b>:</b>	<b>21 U.S.C. § 841(a)(1), (b)(1)(C) (unlawful</b>
	<b>:</b>	<b>distribution of oxycodone - 1 count)</b>
	<b>:</b>	<b>18 U.S.C. § 2</b>
		<b>(aiding and abetting)</b>
		<b>Notice of forfeiture</b>

**INFORMATION**

**COUNT ONE**

**(Conspiracy to Distribute and Possess with Intent to Distribute Oxycodone)**

**THE UNITED STATES ATTORNEY CHARGES THAT:**

At all times material to this information:

1. Defendant THOMAS FORTUNATO was the pharmacist/owner of Squire Pharmacy, a/k/a Squire Drugs, a/k/a Fortunato Enterprises ("Squire Drugs"), 1154 Baltimore Pike, Springfield, Pennsylvania.
2. Under federal law, a pharmacist who fills a prescription for a controlled substance has a duty to make sure before filling the prescription that the prescription was issued by a physician for a legitimate medical purpose, and in the usual course of the physician's professional practice. A prescription that does not meet these requirements is invalid, and a pharmacist may not fill such a prescription.

3. The Controlled Substances Act (“the Act”) governs the manufacture, distribution, and dispensing of controlled substances in the United States. The Act is contained in Title 21 of the United States Code, 21 U.S.C. §§ 801-971.

4. Title 21, United States Code, Section 841, provides that “[e]xcept as authorized, it shall be unlawful for any person to knowingly or intentionally manufacture, distribute, or dispense with intent to manufacture, distribute or dispense, a controlled substance.”

5. Title 21, United States Code, Section 802(10), provides that the term “dispense” means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for delivery.

6. Title 21, United States Code, Section 821, provides that “[t]he Attorney General [of the United States] is authorized to promulgate rules and regulations . . . relating to the registration and control of the manufacture, distribution and dispensing of controlled substances.”

7. The Attorney General of the United States has exercised his rulemaking authority regarding the dispensing of controlled substances through the promulgation of Title 21, Code of Federal Regulations, Section 1306.04, governing the issuance of prescriptions, which provides:

a prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.

An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act [21 U.S.C. § 829] and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the law relating to controlled substances.

8. Oxycodone is the generic name for an addictive prescription painkiller that is classified under the Act as a Schedule II controlled substance. When oxycodone is legally prescribed for a legitimate medical purpose, it is typically used to combat acute, severe pain. Accordingly, the prescription is usually for a modest number of pills to be taken over a short period of time. Brand names for common Schedule II controlled substances containing oxycodone include Percocet, Endocet, Roxicet and Roxicodone. Oxycodone is also the active ingredient in the brand OxyContin, legitimately prescribed for the treatment of moderate-to-severe pain lasting more than a few days. OxyContin can be crushed and snorted or ingested, destroying its delayed time release properties resulting in the delivery of the full dose of oxycodone in a tablet in a short period of time. As a result, oxycodone-based drugs are the subject of illegal trafficking by drug dealers and pharmacists such as defendant THOMAS FORTUNATO who make money by distributing these dangerous drugs.

9. From on or about September 4, 2008, to on or about October 6, 2008, in the Eastern District of Pennsylvania, defendant

**THOMAS FORTUNATO**

conspired and agreed with others known and unknown to the grand jury, including but not limited to Harvey Penn, Mikhail Elam, and John Kerzner, charged elsewhere, and others known and unknown to the grand jury, to knowingly and intentionally distribute and possess with intent

to distribute, not for a legitimate medical purpose, and outside the course of professional practice, mixtures and substances containing detectable amounts of oxycodone, a Schedule II controlled substance, that is, for a total of approximately 568.8 grams of oxycodone (actual), in violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C).

### **MANNER AND MEANS**

It was a part of the conspiracy that:

10. Coconspirator Mikhail Elam, who was employed at a physician's office in Philadelphia, stole and received blank prescription forms and forged and wrote approximately 123 false prescriptions for Percocet, Roxicet, Roxicodone and OxyContin and their generic substitutes, all containing oxycodone, for a total of approximately 14,700 pills containing oxycodone, and provided the forged and false prescriptions to coconspirators Harvey Penn and John Kerzner so that Penn and Kerzner could use the false and forged prescriptions to obtain oxycodone from defendant THOMAS FORTUNATO at Squire Drugs, and subsequently sell the oxycodone for profit to drug abusers on the street.

11. Defendant THOMAS FORTUNATO, as pharmacist and owner of Squire Drugs, filled the false and forged prescriptions for Percocet, Roxicet, Roxicodone and OxyContin and their generic substitutes, all containing oxycodone, under numerous names presented by coconspirator Penn. Penn had presented obvious forged and fictitious Pennsylvania driver's licenses and identifications in the names of individuals to defendant THOMAS FORTUNATO for whom Penn was presenting the forged and false prescriptions to be filled by defendant THOMAS FORTUNATO. Coconspirators Penn, Elam, and Kerzner sold and distributed the oxycodone to other individuals in the Philadelphia area.

12. Coconspirator Harvey Penn paid cash for the fraudulent prescriptions filled by defendant THOMAS FORTUNATO and also regularly supplied employees of Squire Drugs with coffee, donuts and cash tips of between \$20 and \$60 when fraudulent prescriptions were filled.

13. Defendant THOMAS FORTUNATO, as pharmacist and owner of Squire Drugs, made no effort to contact the physicians in whose names the fraudulent prescriptions were written to verify their authenticity and legitimacy, and did not require that his employees at Squire Drugs contact the physicians for that purpose.

### **OVERT ACTS**

In furtherance of the conspiracy, defendant THOMAS FORTUNATO, and others known and unknown to the grand jury committed the following overt acts in the Eastern District of Pennsylvania, and elsewhere:

1. On or about September 4, 2008, defendant THOMAS FORTUNATO filled four false and forged prescriptions for oxycodone for coconspirator Harvey Penn.
2. On or about September 5, 2008, defendant THOMAS FORTUNATO filled nine false and forged prescriptions for oxycodone for coconspirator Harvey Penn.
3. On or about October 2, 2008, defendant THOMAS FORTUNATO filled five false and forged prescriptions for oxycodone for a witness who was cooperating with the government.

4. On or about October 3, 2008, defendant THOMAS FORTUNATO filled four false and forged prescriptions for oxycodone for a witness who was cooperating with the government.

All in violation of Title 21, United States Code, Section 846.

**COUNT TWO**

**(Unlawful Distribution of Oxycodone)**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. Paragraphs 1 through 8 of Count One are incorporated by reference herein.
2. On October 3, 2008, in the Eastern District of Pennsylvania, defendant

**THOMAS FORTUNATO**

knowingly and intentionally distributed and dispensed, and aided, abetted, and willfully caused the distribution and dispensing of, not for a legitimate medical purpose and outside the course of professional practice, a mixture and substance containing a detectable amount of oxycodone, a Schedule II controlled substance, that is, a total of approximately 18.6 grams of oxycodone (actual), by filling a total of four false and forged prescriptions for Percocet, Roxicet, Roxicodone and OxyContin and their generic substitutes, all containing oxycodone.

In violation of Title 21, United States Code, Section 841(a)(1), (b)(1)(C) and Title 18, United States Code, Section 2.

**NOTICE OF FORFEITURE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. As a result of the violations of Title 21, United States Code, Sections 841(a)(1) and 846, set forth in this information, defendant

**THOMAS FORTUNATO**

shall forfeit to the United States of America:

(a) any property used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such offenses, including but not limited to, the cash used to fill the false and forged prescriptions for Percocet, Roxicet, Roxicodone and OxyContin and their generic substitutes, all containing oxycodone, that is, cash in the amount of approximately \$61,811.93; and

(b) any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses, including, but not limited to, the sum of approximately \$61,811.93.


2. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be divided without difficulty;



it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 21, United States Code, Section 853.



**MICHAEL L. LEVY**  
United States Attorney